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Written statement* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Children of parents sentenced to death or executed: UN developments since the HRC Panel

Friends World Committee for Consultation (Quakers) welcomes the report of the United Nations (UN) High Commissioner for Human Rights providing a 'Summary of the panel discussion on the human rights of children of parents sentenced to the death penalty or executed' held by the Human Rights Council (HRC) in September 20 (A/HRC/25/33). The panel represented a milestone in the UN efforts towards promoting the full enjoyment by *al* children of all the rights enshrined in the Convention on the Rights of the Child, including the right to be protected from all forms of physical or mental violence (Art. 19). It highlighted the devastating impact, including emotional trauma leading to long-term damage to mental health, on children when a parent is accused of a capital crime, impact that begins at the point of arrest and can continue even decades after the execution or the parent's release. Among the areas addressed in interventions in the panel discussion were: best interests of the child, care and assistance, information and access to parents on death row and children of parents facing the death penalty in foreign States.

The recommendations made in the discussion[1] give valuable direction for further much-needed work and attention to this issue, including by UN bodies. In this regard, FWCC (Quakers) encourages prompt implementation of the recommendation for an "expert seminar with United Nations experts and practitioners, in order to investigate the issue further, including a full examination of the applicable human rights framework, to enable all relevant international

1 A/HRC/25/33, paragraphs 30 and 31: "30. ... the panelists emphasized that the best option would be abolishing the death penalty; however, where that was not yet the case, it was important to develop measures to minimize the harm suffered by the children of parents sentenced to death or executed. Some 193 States had ratified the Convention on the Rights of the Child, which sets out the best interests of the child as the primary consideration. All States, by adopting the necessary measures, must ensure that children's rights were taken into consideration during sentencing. The panellists also concurred with various delegations that there was a need for treaty bodies and the Human Rights Council to think more about how the best interest of the child could be evaluated in accordance with the provision of the Convention on the Rights of the Child. Furthermore, the panellists also emphasized that it was necessary to provide support and advice to the remaining parent, caregivers and civil society groups, and there was also a need to involve schools in the issue, as schools were suitable institutions at which children could get significant support.

31. The following recommendations were made for further action by the Human Rights Council and other United Nations human rights entities, including the relevant treaty bodies:

(a) Convene an expert seminar, with United Nations experts and practitioners, in order to investigate the issue further, including a full examination of the applicable human rights framework, to enable all relevant international human rights treaty bodies and special procedures to engage with the issues, as well as to provide guidance to States and other bodies;

(b) Develop further guidance regarding the form of assistance referred to in articles 9 and 20 of the Convention on the Rights of the Child, in particular by the Committee on the Rights of the Child drafting a general comment to elaborate on the issue;

(c) Provide due attention to protection of all children from all forms of violence in the context of the current development of the post-2015 agenda, as this could contribute to social progress and the realization of the Millennium Development Goals;

(d) Conduct further research both to understand the scale of the problem for those affected and the issues that individual children of parents sentenced to death experience; and what States, national human rights institutions, civil society organizations and other stakeholders can do to address challenges in the full enjoyment of the human rights of children whose parents are sentenced to the death penalty or executed;

(e) Call on States that still maintain the death penalty to ensure that the rights of the child to information and last visits or communications, as recognized in Human Rights Council resolution 19/37 on the rights of the child, are effectively protected; return the body of a person executed and any personal effects to the family for burial, without payment by the family, or inform them where the body is buried and allow them reasonable access to that location; immediately end any form of secrecy surrounding the use of the death penalty, and ensure domestic legislation complies with international standards on transparency."

human rights treaty bodies and special procedures to engage with the issues, as well as to provide guidance to States and other bodies".

Developments since the Human Rights Council panel

As the Special Representative on Violence against Children pointed out in her statement for the panel discussion, children of parents sentenced to the death penalty have been invisible in statistics, and in policies and programmes.[2] This invisibility prevents a fuller understanding of the impact that sentencing a parent to death has on children, and of how to ensure their rights, needs and welfare are met so far as is possible in such a situation.

For this reason, FWCC (Quakers) welcomes the increasing consideration of the situation and needs of these children within the Committee on the Rights of the Child (CRC), the Universal Periodic Review (UPR) and the General Assembly (GA). We encourage even greater attention, including with regard to the situation of children of parents on death row in countries with moratoria on executions, and of children of nationals of abolitionist or retentionist countries facing the death penalty in other countries.

The following is an overview of some of the developments in the CRC, the UPR and the GA since the holding of the panel.

Committee on the Rights of the Child

During the review of Kuwait's implementation of the Convention on the Rights of the Child in September 2013, the CRC asked questions on: how the best interests of the child were determined and evaluated in criminal proceedings, especially when sentencing a parent to long imprisonment or death;[3] the number of children of incarcerated parents, sentenced to death or executed;[4] and the availability of images of executions in the media.[5] The CRC followed up in its Concluding Observations by urging Kuwait "to assess and fully take into account the best interests of the child in judicial proceedings where parents are involved and when sentencing parents to death."[6] At the same session, it asked China "whether courts took into account the best interests of the child when imposing the death penalty on a parent."[7]

In its List of issues for India (October 2013) the CRC asked that the State "provide information on measures taken to ensure the prioritisation of the right of the child to have his or her interests taken as a primary consideration in all areas of the legislative, executive and judicature of the State party. In doing so, please provide specific details on measures taken to guarantee this right for children whose parents are involved in criminal proceedings, specifically in sentencing and cases involving capital punishment."[8] In an annex to its report India has informed the CRC of the Government of Rajasthan's "unique Scheme to provide alternative care to children without parental care and support" and that children whose parents have received a life imprisonment or death sentence are among those included in that scheme.[9]

In January 2014, in addition to questions relating to the sentencing and executions of child offenders (individuals convicted of crimes committed under the age of 18)[10], the CRC asked Yemen "what support was provided to children of death row inmates and what measures were taken to ensure that they did not face discrimination as a result of their parents' situation. Were children's best interests taken into account when their parents were sentenced and were death row inmates allowed family visits? Were families given warning of an impending execution? … whether the body of a

2 See A/HRC/25/33, paragraph 8.
3 CRC/C/SR.1819, paragraph 21 , and CRC /C/SR.1820, paragraph 55.
4 CRC /C/SR.1820, paragraph 20.
5 CRC /C/SR.1820, paragraphs 55 and 58 - 60 .
6 See CRC /C/KWT/CO/2, paragraphs 31 and 32.
7 CRC/C/SR.1833, paragraph 21.
8 CRC/C/IND/Q/3-4, paragraph 4.
9 Annex to report CRC/C/IND/3-4, paragraph 16.
10 See CRC/C/SR.1849, paragraphs 16, 22, 24, 26-32, and 38.

person who had been executed was returned to the family and, if so, at whose cost."[11] At the same session, it asked Congo whether the judicial system makes any provisions for children whose parents were on death row or serving lengthy prison sentences, what protection, if any, is afforded to them, and how the best interest is translated in this context.[12]

Universal Periodic Review

At the 17th and 18th sessions of the UPR Working Group Belgium sent Written Questions in Advance to China, Malaysia, Saudi Arabia and Nigeria, and to Afghanistan, Viet Nam and Yemen.[13]

These Written Questions addressed issues such as: the number of individuals on death row; the number of them with children and the number of children affected in this way; the number of death sentences and executions since the previous UPR and how many of the individuals concerned have/had children; about support provided to these children; whether families, including children have the right to visit (or, if unable to visit, to communicate in other ways); whether the visiting/communication regime is the same as that for other prisoners; whether family members have the right to be informed of an execution before it takes place, and if so, how are they informed and what is the notice period; and whether children and other family members of a person sentenced to death have the right to a final meeting before an execution is carried out. Belgium also asked about any foreign nationals among the individuals on death row or executed.

At the 17th session of the UPR Working Group, Croatia recommended that Malaysia "ensure that children without parental care due to parental incarceration or execution are provided for, including with support for physical and mental health."[14]

General Assembly

In its omnibus resolution on the rights of the child, adopted without a vote on 18 December 2013, the GA "acknowledges that a parent's deprivation of liberty, sentencing to death or life imprisonment has a serious impact on children's development, and urge States, in the framework of their national child protection efforts, to provide the assistance and support these children may require."[15]

Recommendations

FWCC (Quakers) reiterates the recommendations made in the joint statement submitted for HRC panel discussion on the human rights of children of parents sentenced to the death penalty or executed.[16] In particular, the recommendation that moratoria extend to the imposition of death sentences, in addition to executions, and are accompanied by commutation of all existing death sentences.

We further recommend:

11 See CRC/C/SR.1849, paragraph 38.

12 See CRC/C/SR.1847, paragraph 58, and http://www.treatybodywebcast.org/tag/congo/#podPressPlayerSpace_4 (last accessed on 12 February 2014).

13 The questions can be found on the relevant UPR country page: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx .

14 A/HRC/25/10, paragraph 146.185. Malaysia undertook to respond to UPR recommendations no later than the 25th session of the HRC in March 2014.

15 Draft resolution III in A/68/452, which will be issued as GA resolution A/RES/68/147, operative paragraph 57.

16 Submitted on behalf of Child Rights Connect Working Group on Children of Incarcerated Parents, A/HRC/24/NGO/71, 4 September 2013.

- consideration of and action on the recommendations, such as the holding of an expert seminar, that emerged from the HRC panel and compiled in the High Commissioner's report on it;[17]
- that States circulate the High Commissioner's report on the HRC panel to all relevant actors, including parliamentarians, members of the judiciary, national human rights institutions, and relevant governmental and non-governmental bodies with responsibility for children.

We encourage practitioners with experience in working with these children, non-governmental organisations, national human rights institutions, academics and other relevant actors to provide any relevant information to UN bodies, such as the CRC and the UPR.

17 See footnote 1.